



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
Division of Underground Storage Tanks  
4th Floor, L&C Tower  
401 Church Street  
Nashville, Tennessee 37243-1541**

January 25, 2008

Ruth and Robert Toole  
d/b/a Bi-Lo #7  
2835 Mineral Springs Avenue  
Knoxville, TN 37917

Certified Mail No. 7006 2760 0000 6703 7881

Re: Bi-Lo #7  
2700 Martin Luther King Blvd.  
Knoxville, TN 37914  
Facility ID # 2-470874  
Case # UST07-0169

Dear Mr. and/or Mrs. Toole:

Enclosed is an Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks. The violations were discovered during a facility inspection conducted on May 15, 2007. Specifically, Division personnel discovered:

Violation #1: Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions in accordance with Rule 1200-1-15-.04(1)(a)2.

<u>Individual Civil Penalty Amount for Violation</u>	<u>Multiplication Factor</u>	<u>Total Penalty Civil Penalty</u>
\$1,500.00	3	\$4,500.00

**Total Amount of your Civil Penalty:      \$4,500.00**

The record reflects that, upon being notified, you performed the necessary actions to address the violations and returned to compliance. The Division is appreciative of your effort to return to compliance. For this reason, please note that the enclosed Order provides that you may resolve this matter without appeal for a reduced penalty of eighty percent of the above penalty.

**However, if you accept this offer the remaining balance of the penalty will become due and payable if another Notice of Violation, that addresses a significant operational noncompliance<sup>1</sup> at the facility that is the subject of this Order, is issued by the Division within the twelve months immediately following the issuance of this Order.**

<sup>1</sup> \*A list of violations that involve significant operational noncompliance are attached as Exhibit A.

In reviewing this case, the Division realized that on August 7, 2007, you contacted the Division to change the mailing address for that tank owner. Rule 1200-1-15-.03(1)(g) states owners and operators must submit an amended notification form for any change in status. Please fill out the enclosed amended notification form completely and accurately.

**Please review the enclosed Order, including the Notice of Rights, carefully.** If you accept the Division's offer to resolve this matter for the reduced penalty you must, within thirty (30) days, sign the Waiver of Rights at the end of the enclosed Order and Assessment, complete the enclosed amended notification form and return them with your check or money order in the enclosed self addressed envelope:

Department of Environment & Conservation  
Division of Fiscal Services – Fee Section  
L & C Tower 14<sup>th</sup> Floor  
401 Church St.  
Nashville, TN 37243

Payment of the civil penalty shall be made to the "Treasurer, State of Tennessee". The case number shown on the first page of the enclosed Order should be written on said payment(s).

If you decline the Division's offer to resolve this matter without appeal for the reduced penalty amount you may exercise your right to appeal. However, if you neither accept the Division's offer nor timely appeal, then the entire civil penalty amount of \$4,500.00 will become due and subject to collection.

If you have any questions about this matter, please call Rhonda Key at (615) 532-0972.

Sincerely,

Stanley R. Boyd  
Director

cc: Enforcement file  
Knoxville Field Office

### Exhibit A Significant Operational Compliance Violations

<b>Violation</b>	<b>State Cite</b>	<b>Rule Section</b>
Installation of an improperly designed and constructed tank that fails to meet corrosion protection standards.	1200-1-15-.02(4)(a)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal piping.	1200-1-15-.02(4)(b)	UST Systems: Installation & Operation
Failure to install any spill prevention system.	1200-1-15-.02(3)(a)1(i)	UST Systems: Installation & Operation
Failure to install any overfill prevention system.	1200-1-15-.02(3)(a)1(ii)	UST Systems: Installation & Operation
Operation of a UST system not meeting new UST system performance standards or upgrading requirements after December 22, 1998.	1200-1-15-.07(2)	Out-of-Service UST Systems & Closure
Failure to meet interior lining inspection requirements after tank upgrade.	1200-1-15-.02(4)(a)3(ii)	UST Systems: Installation & Operation
Failure to provide continuous monthly monitoring of cathodic protection for tank upgrade requirement.	1200-1-15-.02(4)(a)2(v)(II)	UST Systems: Installation & Operation
Failure to ensure that tank is structurally sound before lining	1200-1-15-.02(4)(a)3	UST Systems: Installation & Operation
Failure to meet requirements for testing for corrosion holes for a tank upgraded with cathodic protection using the Tennessee Alternative Method.	1200-1-15-.02(4)(a)2(v)(IV)	UST Systems: Installation & Operation
Failure to ensure that cathodic protection system is tested every 3 years.	1200-1-15-.02(4)(c)2(i)	UST Systems: Installation & Operation
Failure to provide release detection method capable of detecting a release from tank or piping that routinely contains product.	1200-1-15-.04(1)(a)1	Release Detection (General)
Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions.	1200-1-15-.04(1)(a)2	Release Detection (General)
Failure to provide a release detection method that meets the performance requirements for tanks or piping.	1200-1-15-.04(1)(a)3	Release Detection (General)
Failure to monitor tanks at least every 30 days, if appropriate.	1200-1-15-.04(2)(a)	Release Detection (General)
Failure to provide any release detection for underground piping.	1200-1-15-.04(2)(b)	Release Detection (Piping)
Failure to install line leak detector for pressurized underground piping.	1200-1-15-.04(2)(b)1(i)	Release Detection (Pressurized Piping)

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
<b>RUTH AND ROBERT TOOLE</b>	)	
	)	<b>CASE NO. UST07-0169</b>
<b>RESPONDENTS</b>	)	

**ORDER AND ASSESSMENT**

NOW COMES James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation (the "Commissioner"), and states:

**PARTIES**

**I.**

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the "Department"), and among other duties and responsibilities, he is charged with the responsibility for administering and enforcing the **Tennessee Petroleum Underground Storage Tank Act** (the "Act") (T.C.A. § 68-215-101 *et seq.*). Stanley R. Boyd is the duly appointed Director of the Underground Storage Tank Division (the "Division"). He has received written delegation from the Commissioner to administer and enforce particular aspects of the Act.

**II.**

Ruth and Robert Toole (hereinafter, the "Respondents"), are the registered owners of three (3) underground storage tank system(s) located at Bi-Lo #7, 2700 Martin Luther King Blvd., Knoxville, TN 37914. Service of process may be made on Ruth and Robert Toole, d/b/a Bi-Lo #7, 2835 Mineral Springs Avenue, Knoxville, TN 37917.

**JURISDICTION**

**III.**

When the Director finds upon investigation that any provision of the Tennessee Code Annotated, § 68-215-101 *et seq.*, is not being carried out, and that effective measures are not being taken to comply with the provisions of the Act, pursuant to T.C.A. § 68-215-114, he may issue an Order for correction to the responsible party, and this Order shall be complied with within the time limit specified in the Order. Pursuant to T.C.A. § 68-215-106(c)(3), the Director may revoke and remove the petroleum underground storage tanks certificate from any petroleum storage tank owner or operator who violates any provisions of the Act or the regulations promulgated thereunder. Further, the Director has the Authority to assess civil penalties against any person who violates or fails to comply with the Act, pursuant to T.C.A. § 68-215-121 of the Act. Pursuant to T.C.A. §§ 68-215-107 and 113, rules of the Department governing underground storage tanks have been promulgated and are effective as the Official Compilation of the Rules and Regulations of the State of Tennessee, Chapter 1200-1-15.

#### **IV.**

The Respondent is a person as defined at T.C.A. § 68-215-103(11), and has violated the Act as hereinafter stated.

#### **FACTS**

#### **V.**

On or about December 21, 1998, the Division received a Notification for Underground Storage Tanks form, signed by Ruth Toole, listing the Respondents as the owners of the three (3) underground storage tank (UST) system(s), located at Bi-Lo #7, 2700 Martin Luther King Blvd., Knoxville, TN 37914. The Division assigned the facility ID #2-470874.

#### **VI.**

On or about April 26, 2007, Division Personnel sent a letter confirming a compliance inspection to be conducted at the subject facility on May 15, 2007.

#### **VII.**

On or about May 15, 2007, Division Personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to have corrosion protection on piping that routinely contains petroleum, specifically the piping associated with the kerosene tank, and

is in contact with the ground in accordance with Rule 1200-1-15-.02(1)(b)2.

- Violation #2: Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions in accordance with Rule 1200-1-15-.04(1)(a)2.

### **VIII.**

On or about May 23, 2007, Division Personnel sent a Notice of Violation (NOV) letter to the Respondents. The letter cited the findings discovered during the inspection and required the Respondents to submit to the Division by June 25, 2007, documentation to demonstrate compliance.

### **IX.**

On or about June 25, 2007, the Division received a letter from the Respondents requesting an extension for the June 25, 2007 deadline.

### **X.**

On or about June 27, 2007, Division Personnel sent a letter to the Respondents granting an extension until July 16, 2007.

### **XI.**

On or about July 16, 2007, the Division received cathodic protection test results dated June 21, 2002 and June 07, 2005. The Division also received a work order by RBM Company verifying that the kerosene piping is fiberglass. The Respondents also noted that one automatic tank gauge (ATG) probe had been stolen. This required the Respondents to replace all of the probes and get new software. Therefore, no historical results could be submitted.

Note: This information showed that violation #1 was not a violation.

### **XII.**

On or about August 6, 2007, the Division received a letter from the Respondents regarding the invalid test results for the Veeder Root automatic tank gauge (ATG) that were submitted to Division Personnel at the time of inspection. The letter stated that the Veeder Root ATG readings were enclosed with the letter, however the results submitted were invalid as well.

### **XIII.**

On or about August 14, 2007, Division Personnel sent an Enforcement Action Notice (EAN) letter to the Respondents. The letter listed violations discovered during the compliance inspection.

### **XIV.**

On or about August 30, 2007, Division Personnel sent a Warning Letter to the Respondents requesting valid ATG readings, specifically for the kerosene tank. This letter gave the Respondents until September 14, 2007 to submit valid ATG readings and come into compliance.

### **XV.**

On or about September 12, 2007, the Warning Letter sent to the Respondents on August 30, 2007 was returned to the Division as, “Undeliverable as Addressed.”

### **XVI.**

On or about September 13, 2007, Division Personnel sent a second Warning Letter to the Respondents requesting valid ATG readings, specifically for the kerosene tank. This letter was sent to a different address than the first Warning Letter and gave the Respondents until September 28, 2007 to submit valid ATG readings and come into compliance. The new address obtained by Division Personnel came after researching the Notification Database. It was noted in the comments section under the heading of ‘Owner Information’ that by telephone, per the owners request, the mailing address was changed from P.O. Box 6567, Knoxville, 37914 to 2835 Mineral Springs Avenue, Knoxville, 37917. To date, no Amended Notification form has been received concerning this change of mailing address.

### **XVII.**

On or about October 9, 2007, Division Personnel received ATG readings for the tanks at this facility. The readings submitted still showed a Low Level Test Error for the kerosene tank. Division Personnel reached one of the Respondents, Mrs. Ruth Toole, by phone giving the Respondents until October 23, 2007 to complete one of the following three options as remedies to this problem:

1. Pump the tank to less than one inch of product and formally place tank in temporarily out-of-service (TOS) status; or,
2. Fill the tank with product to a level that the ATG can perform it’s test properly; or,
3. Change the current release detection method to SIR.

## **XVIII.**

On or about October 19, 2007, Division Personnel received passing ATG readings for the kerosene tank and the facility returned to compliance.

## **VIOLATIONS**

### **XIX.**

By operating a petroleum underground storage tank system without complying with the Act, the Respondents have violated T.C.A. § 68-215-104(2), which says:

It is unlawful to: Construct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto;

### **XX.**

By failing to install, calibrate, operate, or maintain release detection in accordance with manufacturer's instructions, the Respondents have violated Rule 1200-1-15-.04(1)(a)2, which states:

#### **1200-1-15-.04 RELEASE DETECTION.**

- (1) General requirements for release detection.
  - (a) Owners and/or operators of new and existing UST systems shall provide a method or a combination of methods, of release detection that:
    - (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance, and service check for operability or running conditions;



## ORDER

### XXI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 68-215-107, 68-215-109, 68-215-114, and 68-215-121;

I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following ASSESSMENTS and ORDERS to the Respondents:

1. The Respondents shall comply with all applicable requirements of the Act and the Tennessee Petroleum Underground Storage Tank Regulations (Rule 1200-1-15-.01 *et seq.*) in the future.
2. The Respondents are assessed a CIVIL PENALTY in the amount of FOUR THOUSAND FIVE HUNDRED DOLLARS \$4,500.00.
  - (a) If the Respondents sign and return the Waiver of Right to Appeal Section on the last page of this Order and Assessment to the Division within thirty (30) days of receiving this Order and Assessment, said assessed penalty is payable as follows:
    - (i) NINE HUNDRED DOLLARS (\$900.00) shall be paid to the Division within thirty (30) days after this Order is received.
    - (ii) The remaining THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) balance shall be paid to the Division if, and only if, another Notice of Violation, addressing a significant operational noncompliance<sup>2</sup> at the subject facility, is issued by the Division within the twelve months immediately following the issuance of this Order and Assessment becoming final. In that event, the THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) balance shall be paid to the Division within thirty (30) days of the Respondents' receipt of the Notice of Violation. Further, in that event, the Division reserves the right to assess additional penalties and to take any and all other enforcement actions that it deems necessary.
    - (iii) **If the Respondents fail to pay the amount set out in paragraph (2)(a)(i) or fail to return the signed Waiver of Right to Appeal within**

**thirty (30) days after receiving this Order and Assessment, the full amount of the civil penalties assessed, (\$4,500.00), shall become immediately due and payable to the Division within thirty (30) days of the Respondents' receipt of this Order.**

The Respondents are advised that the foregoing Order is not in any way to be construed as a waiver, express or implied, of any provision of the law or regulations, including but not limited to, future enforcement for violations of the Act and Regulations which are not charged as violations in this Order.

Issued by the Director of the Division of Underground Storage Tanks this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Stanley R. Boyd, Director

Division of Underground Storage Tanks

Tennessee Department of Environment and Conservation

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<sup>2</sup> \*A list of violations that involve significant operational noncompliance are attached as Exhibit A.

## NOTICE OF RIGHTS

The Respondents are hereby advised that in accordance with Tennessee Code Annotated §§ 68-215-119 and 68-215-121, the Respondents may secure review of this Order and Assessment by filing with the Director a written petition setting forth each ground and reason for the Respondents' objections within thirty (30) days from the Respondents' receipt of this Order and Assessment. If the required written petition is filed within thirty (30) days from the Respondents' receipt of this Order and Assessment, then the Respondents shall have perfected an appeal and shall have an opportunity for a hearing before the Tennessee Petroleum Underground Storage Tank Board. Further, the Respondents have the right to be represented by counsel, to submit responsive pleadings, to subpoena witnesses on its behalf, and to present evidence and argument on all issues involved.

## WAIVER OF RIGHT TO APPEAL

The Respondents may resolve this matter by consenting to this Order and Assessment and waiving the right to appeal. To do so, the Respondents must sign this waiver below and return it along with the payment of penalty stipulated under section **XXI.(2)(a)(i)**, (\$**900.00**) to the Division within thirty (30) days of receiving this Order and Assessment.

The Respondents knowingly and voluntarily waive the right to appeal this Order and Assessment as evidenced by the signature below.

Director's Order # **UST07-0169**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_